

**Bold** = new language

~~Strikeout~~ = existing language deleted in this rulemaking

## **TITLE 329 SOLID WASTE MANAGEMENT DIVISION**

### **DRAFT RULE**

LSA Document #14-288

### **DIGEST**

Amends 329 IAC 3.1-1-7, 329 IAC 3.1-6-2, and 329 IAC 3.1-11-2 concerning updates to the hazardous waste rules at 329 IAC 3.1. Effective 30 days after filing with the Publisher.

### **HISTORY**

Findings and Determination of the Commissioner Pursuant to IC 13-14-9-7 and Second Notice of Comment Period: July 23, 2014, Indiana Register (DIN: 20140723-IR-329140288FDA).

Notice of No Public Hearing: July 23, 2014, Indiana Register (DIN: 20140723-IR-329140288PHA).

Change in Notice of Public Hearing: October 1, 2014, Indiana Register (DIN: 20141001-IR-329140288CHA).

Date of First Hearing: November 12, 2014.

**329 IAC 3.1-1-7; 329 IAC 3.1-6-2; 329 IAC 3.1-11-2.**

### **DRAFT RULE**

SECTION 1. 329 IAC 3.1-1-7 IS AMENDED TO READ AS FOLLOWS:

#### **329 IAC 3.1-1-7 Incorporation by reference**

**Authority: IC 13-19-3-1; IC 13-22-4**

**Affected: IC 13-14-8; 40 CFR 260.11**

Sec. 7. (a) When incorporated by reference in this article, references to 40 CFR 260 through 40 CFR 270 and 40 CFR 273 shall mean the version of that publication revised as of July 1, 2008, and amended as published in the Federal Register on:

(1) December 1, 2008, at 73 FR 72954 through 73 FR 72960;

**(2) January 8, 2010, at 75 FR 1253 through 75 FR 1262;**

~~(2)~~ **(3)** June 15, 2010, at 75 FR 33716 through 75 FR 33724;

~~(3)~~ **(4)** September 22, 2010, at 75 FR 57687 through 75 FR 57688;

~~(4)~~ **(5)** December 17, 2010, at 75 FR 78926; ~~and~~

~~(5)~~ **(6)** December 20, 2010, at 75 FR 79308;

- (7) June 13, 2011, at 76 FR 34153 through 75 FR 34157;**
- (8) April 13, 2012, at 77 FR 22232;**
- (9) July 31, 2013, at 78 FR 46484 through 78 FR 46485; and**
- (10) January 3, 2014, at 79 FR 363 through 79 FR 364.**

(b) When used in 40 CFR 260 through 40 CFR 270 and 40 CFR 273, as incorporated in this article, references to federally incorporated publications shall mean that version of the publication as specified at 40 CFR 260.11.

(c) The following publications are also incorporated by reference:

- (1) 40 CFR 146, revised as of July 1, 2005.
- (2) 40 CFR 60, Appendix A-1, revised as of July 1, 2005.
- (3) 40 CFR 60, Appendix A-2, revised as of July 1, 2005.
- (4) 40 CFR 60, Appendix A-3, revised as of July 1, 2005.
- (5) 40 CFR 60, Appendix A-4, revised as of July 1, 2005.
- (6) 40 CFR 60, Appendix A-5, revised as of July 1, 2005.
- (7) 40 CFR 60, Appendix A-6, revised as of July 1, 2005.
- (8) 40 CFR 60, Appendix A-7, revised as of July 1, 2005.
- (9) 40 CFR 60, Appendix A-8, revised as of July 1, 2005.

(d) Federal regulations that have been incorporated by reference do not include any later amendments than those specified in the incorporation citation in subsections (a) through (c). Sales of the Code of Federal Regulations are handled by the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954, or online at <http://bookstore.gpo.gov/>. The telephone number for the Superintendent of Documents is (202) 512-1800 or toll-free (866) 512-1800. The incorporated materials are available for public review at the offices of the department of environmental management.

(e) Where exceptions to incorporated federal regulations are necessary, these exceptions will be noted in the text of the rule. In addition, all references to administrative stays are deleted.

(f) Cross-references within federal regulations that have been incorporated by reference shall mean the cross-referenced provision as incorporated in this rule with any indicated additions and exceptions.

(g) The incorporation of federal regulations as state rules does not negate the requirement to comply with federal provisions that may be effective in Indiana that are not incorporated in this article or are retained as federal authority.

*(Solid Waste Management Division; 329 IAC 3.1-1-7; filed Jan 24, 1992, 2:00 p.m.: 15 IR 909; filed Oct 23, 1992, 12:00 p.m.: 16 IR 848; filed May 6, 1994, 5:00 p.m.: 17 IR 2061; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3353; filed Jan 9, 1997,*

4:00 p.m.: 20 IR 1111; filed Oct 31, 1997, 8:45 a.m.: 21 IR 947; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2739; errata filed Apr 8, 1998, 2:50 p.m.: 21 IR 2989; filed Mar 6, 2000, 8:02 a.m.: 23 IR 1637; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2431; errata filed Oct 15, 2001, 11:24 a.m.: 25 IR 813; filed Jun 3, 2002, 10:40 a.m.: 25 IR 3111; filed Jan 14, 2004, 3:20 p.m.: 27 IR 1874; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2661; filed Jun 9, 2006, 3:40 p.m.: 20060712-IR-329050066FRA, eff Sep 5, 2006; filed Dec 26, 2007, 1:44 p.m.: 20080123-IR-329060556FRA; filed Sep 11, 2009, 2:39 p.m.: 20091007-IR-329080673FRA; filed Aug 27, 2010, 11:54 a.m.: 20100922-IR-329090613FRA; filed May 29, 2012, 3:20 p.m.: 20120627-IR-329110090FRA; filed Mar 15, 2013, 2:44 p.m.: 20130410-IR-329120506FRA)

SECTION 2. 329 IAC 3.1-6-2 IS AMENDED TO READ AS FOLLOWS:

**329 IAC 3.1-6-2 Exceptions and additions; identification and listing of hazardous waste**

**Authority:** IC 13-14-8; IC 13-22-2-4

**Affected:** IC 13-11-2-99; IC 13-11-2-205; IC 13-11-2-245; IC 13-11-2-266; IC 13-14-2-2; IC 13-14-10-1; IC 13-22-2-3; P.L.231-2003, SECTION 6; 40 CFR 261

Sec. 2. Exceptions and additions to federal standards for identification and listing of hazardous waste are as follows:

(1) This rule identifies only some of the materials that are solid waste as defined by IC 13-11-2-205(a) and hazardous waste as defined by IC 13-11-2-99(a), including IC 13-22-2-3(b). A material that is not defined as a solid waste in this rule, or is not a hazardous waste identified or listed in this rule, is still a solid waste and a hazardous waste for purposes of this article if, in the case of:

(A) IC 13-14-2-2, the commissioner has reason to believe that the material may be a solid waste within the meaning of IC 13-11-2-205(a) and a hazardous waste within the meaning of IC 13-11-2-99(a); or

(B) IC 13-14-10-1, the statutory elements are established.

(2) Delete 40 CFR 261.2(f) and substitute the following: Respondents in actions to enforce regulations implementing IC 13 who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation to demonstrate that the material is not a waste or is exempt from regulation. An example of appropriate documentation is a contract showing that a second person uses the material as an ingredient in a production process. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so.

(3) References to the "administrator" in 40 CFR 261.10 through 40 CFR 261.11 means the SWMB.

(4) In addition to the requirements outlined in 40 CFR 261.6(c)(2), owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to 40 CFR 265.10 through 40 CFR 265.77.

(5) In addition to the listing of federal hazardous waste incorporated by reference in section 1 of this rule, the wastes listed in section 3 of this rule are added to the listing.

(6) In 40 CFR 261.4(e)(3)(iii), delete the words "in the Region where the sample is collected".

(7) In 40 CFR 261.21(a)(3), delete "an ignitable compressed gas as defined in 49 CFR 173.300" and substitute "a flammable gas as defined in 49 CFR 173.115(a)".

(8) In 40 CFR 261.21(a)(4), delete "an oxidizer as defined in 49 CFR 173.151" and substitute "an oxidizer as defined in 49 CFR 173.127".

(9) Delete 40 CFR 261.23(a)(8) and substitute "It is a forbidden explosive as defined in 49 CFR 173.54; or would have been a Class A explosive as defined in 49 CFR 173.54 prior to HM-181, or a Class B explosive as defined in 49 CFR 173.88 prior to HM-181.".

(10) Delete 40 CFR 261.1(c)(9) through 40 CFR 261.1(c)(12).

(11) Delete 40 CFR 261.4(a)(13) and substitute section 4 of this rule.

(12) Delete 40 CFR 261.4(a)(14) and substitute section 4 of this rule.

(13) Delete 40 CFR 261.6(a)(3)(ii) and substitute section 4 of this rule.

(14) Delete 40 CFR 261.2(e)(1)(i) dealing with use or reuse of secondary materials to make products and substitute section 5 of this rule.

(15) In 40 CFR 261.5(j), delete "if it is destined to be burned for energy recovery" in two (2) places.

(16) In 40 CFR 261.33, remove the entries for the U202 hazardous waste code in the table in paragraph (f).

(17) In addition to the solid wastes excluded in 40 CFR 261.4(b), electronic waste or e-waste is excluded, which is any of the following or has the following component:

(A) A circuit board, including a shredded circuit board.

(B) A diode.

(C) A CRT.

(D) A computer.

(E) An electronic device.

E-waste does not include vehicles, as defined by IC 13-11-2-245, or white goods, as defined by IC 13-11-2-266. Electronic waste is regulated under 329 IAC 16 and must comply with all applicable standards and requirements under 329 IAC 16.

(18) In 40 CFR 261, Appendix VIII, remove the entries for "Saccharine" and "Saccharin salts" from the table "Hazardous Constituents".

(19) Delete 40 CFR 261.38 as published in the July 1, 2008, edition and substitute the revised text of 40 CFR 261.38 as published at 75 FR 33716 through 75 FR 33724, June 15, 2010.

**(20) At 40 CFR 261.4(a)(26)(i) and 40 CFR 261.4(b)(18)(i), delete the phrase "Excluded Solvent-Contaminated Wipes" and substitute the phrase "'Excluded**

**Solvent-Contaminated Wipes' or other words indicating the contents of the container''.**

*(Solid Waste Management Division; 329 IAC 3.1-6-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 924; filed May 6, 1994, 5:00 p.m.: 17 IR 2063; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3355; filed Aug 7, 1996, 5:00 p.m.: 19 IR 3364; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1112; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2741; filed Jan 3, 2000, 10:00 a.m.: 23 IR 1096; filed Mar 6, 2000, 8:02 a.m.: 23 IR 1638; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2432; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2662; filed Aug 15, 2007, 10:22 a.m.: 20070912-IR-329050181FRA; filed May 29, 2012, 3:20 p.m.: 20120627-IR-329110090FRA)*

**SECTION 3. 329 IAC 3.1-11-2 IS AMENDED TO READ AS FOLLOWS:**

**329 IAC 3.1-11-2 Exceptions and additions; specific standards**

**Authority: IC 13-14-8; IC 13-22-2-4**

**Affected: IC 13-15-2; IC 13-22-2; 40 CFR 266**

Sec. 2. Exceptions and additions to standards for the management of specific hazardous waste and specific types of hazardous waste facilities are as follows:

(1) Delete 40 CFR 266.23(b) and substitute the following: "No person may apply or allow the application of used oil as defined in 329 IAC 3.1-4 to any ground surface except for purposes of treatment in accordance with a permit issued by the department under IC 13-15-2. The use of unused waste oil or other waste material, which is contaminated with dioxin or hazardous waste or exhibits any characteristic of hazardous waste except ignitability for dust suppression or road treatment is prohibited."

(2) In 40 CFR 266.102(a)(2)(viii) dealing with applicable financial requirements for burners, the references to federal cites shall be converted as follows:

(A) 264.141 means 329 IAC 3.1-15-2.

(B) 264.142 means 329 IAC 3.1-15-3.

(C) 264.143 means 329 IAC 3.1-15-4.

(D) 264.147 through 264.151 means 329 IAC 3.1-15-8 through 329 IAC 3.1-15-10.

(3) Delete 40 CFR 266, Subpart G, **except for 40 CFR 266.80(a)(6) through 40 CFR 266.80(a)(7)**, and insert 329 IAC 3.1-11.1.

*(Solid Waste Management Division; 329 IAC 3.1-11-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 939; errata filed Feb 6, 1992, 3:15 p.m.: 15 IR 1027; filed Oct 23, 1992, 12:00 p.m.: 16 IR 849; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2743; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jul 15, 2013, 11:02 a.m.: 20130814-IR-329090365FRA)*